



Signed and Filed: September 15, 2022

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5 HANNAH L. BLUMENSTIEL
6 U.S. Bankruptcy Judge

7 UNITED STATES BANKRUPTCY COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 In re:) Case No. 19-31024 HLB
10 RICHARD TOM,)
11 Debtor.)
12)
13 MARK NG, KENDALL NG, and) Adv. Proc. No. 19-3065 HLB
14 LORAIN WONG,)
15 Plaintiffs,)
16 v.)
17 RICHARD TOM,)
18 Defendant.)
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ORDER STRIKING PLAINTIFFS' COUNSEL'S DECLARATION

This proceeding is scheduled to come before the court on September 15, 2022 for a hearing on the court's Order to Show Cause.¹ The OSC requires third-party Kenesha Fudge to appear and show cause as to why the court should not find Ms. Fudge in contempt and impose sanctions in light of her alleged failure to comply with the court's Sixth Order Regarding Discovery Dispute.²

¹ Dkt. 145 (the "OSC").

² Dkt. 103 (the "Sixth Order").

1 The Sixth Order required Ms. Fudge to appear in her capacity
2 as Trustee of the Moon Irrevocable Trust ("MIT") and testify at a
3 continued deposition no later than June 30, 2022 and to produce
4 material in response to a subpoena no later than June 17, 2022.
5 Plaintiffs Mark Ng, Kendall Ng, and Loraine Wong have alleged
6 that Ms. Fudge has not complied with the Sixth Order.

7 The OSC invited Plaintiffs and Ms. Fudge to file written
8 responses no later than September 6, 2022. The OSC did not
9 prohibit additional filings, but it certainly did not invite
10 them. After close of business on September 14, 2022, Plaintiffs
11 filed a Declaration of their counsel, Ms. Kathryn S. Diemer.³

12 Based solely on its title, the Diemer Decl. appears to
13 contend that some unnamed party or third party has made "directly
14 contradictory statements about Green Oasis Limited Partnership's
15 control and management" and asserts that this is somehow relevant
16 to the OSC. No certificate of service was filed with the Diemer
17 Decl., which forces the court to assume that Plaintiffs' counsel
18 made no effort to serve it on anyone.

19 Defendant Richard Tom is *pro se* and does not receive
20 automated service of pleadings through the court's electronic
21 filing system. Ms. Fudge also will not receive automated
22 service. While Ms. Fudge recently retained counsel to represent
23 her in her capacity as Trustee of the Moon Irrevocable Trust,
24 that attorney (Mr. Jonathan Lee) does not have e-filing
25 credentials in this court and therefore also would not receive
26 automated service through the court's electronic filing system.

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28 ³ Dkt. 156 (the "Diemer Decl.").

The court cannot and will not consider evidence that was filed (literally) on the eve of the hearing on the OSC and that was not served. Plaintiffs' counsel's disregard for basic due process considerations is unprofessional and has forced the court to waste its resources preparing and issuing this order. The court admonishes Plaintiffs' counsel to think carefully about service and notice before filing pleadings with the court.

8 Based on the fact that neither Mr. Tom nor Ms. Fudge nor Ms.
9 Fudge's counsel received the Diemer Decl. and have had no
10 opportunity to respond to its allegations, the court **ORDERS** the
11 Diemer Decl. **STRICKEN**.

****END OF ORDER****

Court Service List

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103 Benji Court
Meridianville, AL 35759

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